

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT

CAUSE NO. 49D02-0807-PL-029256

STATE OF INDIANA,)

Plaintiff,)

v.)

BRIAN S. HESSLER, individually)
and doing business as)
GREAT BUSINESS)
OPPORTUNITIES, LLC)

Defendant.)

FILED
266 MAR 23 2009
Elizabeth A. White
CLERK OF THE MARION CIRCUIT COURT

SUMMARY JUDGMENT

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Tammy Somers, having filed its Motion for Summary Judgment and its Memorandum and Designation of Evidence in support of Plaintiff's Motion for Summary Judgment, now **GRANTS** the Plaintiff's motion and makes the following findings of undisputed facts and conclusions of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Defendant's transaction entered into with Rick Hayworth is a "business opportunities" as defined by Ind. Code § 24-5-8-1. The Defendant is a "seller" as defined by Ind. Code § 24-5-8-1. The Defendant failed to file with the Consumer Protection Division of the Office of the Attorney General a copy of the disclosure statement and surety bond and pay the initial filing fee of fifty Dollars (\$50.00) prior to placing any advertisement or making any representation to any Indiana investor about its business opportunity.

On or between November 6, 2006 and December 22, 2006, Rick Hayworth of Fowler, Indiana contracted with the Defendant to purchase a travel website, a "level II" travel package, and television advertising for a total price of Five Thousand One Hundred and Forty-Nine Dollars (\$5,149.00). On or about December 22, 2006, Hayworth had paid to the Defendant a total initial cash payment of Five Thousand One Hundred and Forty-Nine Dollars (\$5,149.00).

The Defendant's contract, consisting of the three invoices received by Hayworth, failed to include the following information, as required by Ind. Code § 24-5-8-6:

- a. the name and business address of Defendant's agent in Indiana authorized to receive service of process;
- b. a detailed description of any services that the Defendant undertakes to perform for the investor;
- c. a detailed description of any training that Defendant undertakes to provide to the investor;
- d. the approximate delivery date of any goods Defendant is to deliver to the investor; and
- e. a statement of the investor's thirty (30) day right to cancel the contract.

The Defendant did not provide Hayworth with a copy of a disclosure document containing the information required by Ind. Code 24-5-8-2. The Defendant did not obtain a surety bond in favor of the State of Indiana for the use and benefit of investors, as required by Ind. Code § 24-5-8-3, prior to its transaction with Hayworth. The Defendant would not issue a refund to Hayworth or cancel the contract once it was learned

Hayworth was not receiving the represented investment return promised by the Defendant.

Plaintiff has expended Twelve (12) hours investigating and prosecuting this case, and One Thousand Two Hundred Dollars (\$1,200.00) is a reasonable fee for the time expended in this matter. Defendant's failure to file with the Consumer Protection Division of the Office of the Attorney General a copy of the disclosure statement and surety bond and pay the initial filing fee of Fifty Dollars (\$50.00) prior to placing any advertisement or making any representation to any Indiana investor about its business opportunity, as referenced in paragraph 5 above, is a violation of Ind. Code § 24-5-8-4. Defendant's failure to obtain a surety bond in favor of the State of Indiana, as referred to in paragraph 10, above, is a violation of Ind. Code § 24-5-8-3.

Defendant's failure to provide Hayworth with the disclosures required by Indiana law at least seventy-two (72) hours before the earlier of Hayworth's execution of a business opportunity contract with the Defendant or receipt of any consideration by the Defendant, as referred to paragraph 9 above, is a violation of Ind. Code § 24-5-8-2.

Defendant's failures to include in its contract the information referenced in paragraph 8 is a violation of Ind. Code § 24-5-8-6(b).

JUDGMENT

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED the Plaintiff's Motion for Summary Judgment against the Defendant is **GRANTED**, Defendant's Motion to Dismiss is **DENIED**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, pursuant to Ind. Code § 24-5-0.5-4(c)(1), the Defendant, its agents, representatives, employees,

successors and assigns are permanently enjoined from engaging in conduct in violation of Ind. Code 24-5-8-1 *et seq.* or Ind. Code § 24-5-0.5-1 *et seq.*

IT IS FURTHER ORDERED, ADJUGED, AND DECREED that judgment is entered in favor of the Plaintiff, State of Indiana, and against the Defendant, Brian S. Hessler, individually and doing business as Great Business Opportunities, LLC, as follows:

The contract that was entered into between the Defendant and Rick Hayworth is cancelled, pursuant to Ind. Code § 24-5-0.5-4(d).

a. The Defendant shall pay the Office of the Attorney General its costs in investigating and prosecuting this action, pursuant to Ind. Code § 24-5-0.5-4(c)(3), in the amount of One Thousand Two Hundred and twenty Dollars (\$1,220.00); and

b. The Defendant shall pay civil penalties pursuant to Ind. Code § 24-5-0.5-4(g) for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of Twenty-Five Thousand Dollars (\$25,000.00), payable to the State of Indiana.

A total monetary judgment in the amount of twenty six thousand two hundred and twenty thousand (\$26220.00), and judgment shall therefore be entered in favor of the Plaintiff, State of Indiana, and against the Defendant.

All of which is ORDERED, ADJUDGED AND DECREED, this ^{23rd} day of *March* 2009.

Judge, Marion Superior Court



DISTRIBUTION:

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